IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.5465 of 2004

G.Rajavelu ... Petitioner

Versus

1. The District Forest Officer,
Nagapattinam.

2. The Forest Range Officer,
Sirkali Range. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of Mandamus, directing the respondents not to interfere with the petitioner's drawal of sea water through the PVC pipes from the existing canal to the petitioner's land in S.No.7, 17/1, 17/2A3 and 17/2A4 at Thandavanakulam Village, Sirkali Taluk.

For Petitioner : Mr. S.K.Nachimuthu

For Respondents : Mr. K.Rajasekar,
Government Advocate

O R D E R

Brief facts leading to the Writ Petition are as follows:
The petitioner is running a Shrimp Farm for the past 15 years, in an area measuring an extent of 3.36 hectares of lands in S.Nos.7, 17/1, 17/2A3 and 17/2A-4. The main object of petitioner's business is to promote the improved traditional system of aqua culture such as Fish Culture, Prawn Culture etc. At the time of setting up of Aqua Culture Farm, no licence was required to run the farm and for this project, his main requirement is Brackish water, which flows from the sea through Bucklinggham Canal and have sub-canals.

2. It is further submitted that petitioner's land is situated adjoining to these canals and there is no forest land between his land and the canal. All along, the petitioner was drawing water from these canals to his lands and there was no objection from the Forest Officials. In order to regularise the aqua culture activities, the Ministry of Agriculture decided to issue licence to the aqua cultural farms and therefore, the petitioner has made an application to the Ministry of Agriculture for grant of licence. On receipt of the application, petitioner's farm was inspected and by proceedings dated 15.09.2003, the Ministry of Agriculture issued licence in Form 11 for the period of 3 years. While the matter stood thus, all of a sudden, the Forest Officials issued notice to the owners of the Shrimp Farm, directing them not to draw water from the sea. Aggrieved by the order of the respondents, the petitioner has preferred the present Writ Petition.

3. Assailing the action of the respondents, it is submitted that though the canal run through the forest land, it is maintained and controlled only by Public Works Department and therefore, the Forest Officials are not competent to control over drawing the water from the sea. It is further submitted that the respondents are allowing the nearby units, viz., Rajiv Gandhi Centre for aqua culture to take water through their lands, though the Centre had not obtained any permission from the respondents to get water. Even in the case of objectionable encroachment under Section 68-A of the Tamil Nadu Forest Act, 1882, notice to the persons in occupation of the Forest Land is mandatory and in the absence of any notice, action for eviction is illegal. According to the petitioner, he is not in occupation of forest lands and therefore, the action of the respondents in preventing the petitioner from getting water from the sea is arbitrary and excess of jurisdiction.

4. While admitting this Writ Petition, this Court by order dated 06.03.2004, granted interim injunction restraining the respondents from interfering with petitioner's drawal of sea water through PVC pipes from the canal.

5. The first respondent filed vacate stay petition and contended that Pudupattinam Reserved Forest Bit was notified as Reserved Forest under Section 16 of the Tamil Nadu Forest Act, 1882, vide G.O.Ms.No.93, Environment and Forests Department, dated 20.09.1982. The petitioner had tress-passed the reserved Forest bit-I of Sirkali Range, breaking up the soil by uprooting the mangrove species, causing damage to the Mangrove eco-system and illegally drew sea water through PVC pipeline to his aqua culture farm. Notice of warning was issued as early as on 15.05.2003 and he was cautioned not to draw sea water through the pipes. However, on 26.09.2003, on perambulation of Reserved Forest area by the Special party comprising of Forest Ranger, two Foresters, one Forest Guard and Forest Watcher, found breaking up of soil uprooting mangrove species and laid PVC pipeline from Sakthi Marine Exports (P) Limited., to the canal through the Pudupattinam Reserved Forest Bit-I and the petitioner was illegally drawing sea water through the PVC pipelines. Therefore, an offence was booked in OR.No.34 of 2003 under Section 5 and Sections 21(a), (d), (e), (f), (g) and (h) of the Tamil Nadu Forest Act, 1882 and the pipelines were dismantled and thereby illegal drawal of sea water through the Reserved Forest was stopped. During perambulation, the Village Administrative Officer, Pudupattinam was present and the seized materials were handed over to him.

6. The respondent has denied the contention of the petitioner that there is no Forest Land between his land and the canal and submitted that in between the petitioner's land and the canal (Back water), there lies Pudupattinam Reserved Forest Bit-I. The petitioner has trespassed into the reserved forest and drew sea water through PVC pipes, breaking up the soil and uprooting the mangrove species. The respondent has further submitted that the subject land is a reserved forest area and therefore, it attracts the provisions of both the Tamil Nadu Forest Act, 1882 as well as the Forest (Conservation) Act, 1980.

8. The respondent has further submitted that the notice of warning was issued as early as on 15.05.2003 to various shrimp farms adjoining to Pudupattinam reserved Forest Bit-I, including the petitioner and thereby they were advised not to draw water through the forest land. As many as 23 parties were served with such notice and the petitioner is at Sl.No.12 in the list. The said notice was issued only after ascertaining the lands in occupation of the respective persons. Though the canals are maintained by the Public Works Department, the adjoining forest lands belong to the Forest Department and therefore, it is obligatory on the part of the Forest Department to protect the forest and its wealth.

9. The respondent has further submitted that Rajiv Gandhi Centre for aqua culture is a central Government organization, drawing water only for research purpose, whereas, the petitioner is drawing sea water for commercial purpose and therefore it is not open to the petitioner to compare himself with the Centre. It is the case of the respondents that pipe lines illegally laid by the petitioner was dismantled, as early as on 26.09.2003 itself and suppressing the said fact, the petitioner had misdirected this Court, as if that the pipe lines were still in existence on the date of filing of the Writ Petition and obtained an interim order. After getting the interim orders from this Court, the petitioner has tress-passed into the reserved forest and attempted to lay pipe line. Unless the petitioner is prevented from indulging in such activities, the interest of the Forest Department would be affected. In these circumstances, the respondents has prayed for dismissal of the Writ Petition.

10. Heard Mr. S.K.Nachimuthu, learned counsel for the petitioner and Mr. K.Rajasekar, learned Government Advocate, for the respondents.

11. Perusal of the pleadings disclose the fact that the shrimp farms are situated adjoining to Pudupattinam Reserved Forest Bit I. The petitioner, to promote his shrimp farm aqua culture activity, had been drawing sea water through the PVC pipelines. The contention of the respondent that on 26.09.2003, on perambulation of the Reserved Forest Area by the Special party comprising of Forest Ranger, two Foresters, one Forest Guard and Forest Watcher, found breaking up of soil, uprooting the mangrove species and laid the PVC pipes from Sakthi Marine Exports (P) Limited, has not been disputed by the petitioner.

12. The affidavit filed in support of the Vacate Stay Petition further disclose that the Forest Department had registered a criminal case in OR.No.34 of 2003 under Sections 5, 21(a), (d), (e), (f), (g) and (h) of the Tamil Nadu Forest Act, 1882 against 23 persons, including the petitioner and notice of warning was also served on them, advising them not to draw water through the forest land. It is evident that the seized materials were handedover to the Village Administrative Officer, Pudupattinam. On 26.09.2003, the Forest Officials inspected the disputed place and dismantled the pipes laid down by the petitioner. The fact that a criminal case has been registered against the petitioner for illegal drawing of sea water through the Pudipattinam Reserved Forest Bit-I, indicates that in between petitioner's land and the canal (back water), there lies forest lands. As rightly pointed by the learned Government Advocate that drawing sea water by Rajiv Gandhi Centre for aqua culture, which is the central Government Organization, is for the research purpose, the same cannot be compared with the activity of the petitioner.

13. The Supreme Court in T.N.Godavaraman Thirumulpad v. Union of India and others reported in 2006 (1) SCC 1, the Supreme Court held that natural resources are the assets of the entire nation. It is the obligation of all concerned, including the Union Government and State Governments to conserve and not waste these resources. Any threat to the ecology can lead to violation of right of enjoyment of health life guaranteed under Article 21, which is required to be protected. The constitution enjoins upon the Supreme Court a duty to protect the environment.

14. While dealing with the diversion of Forest Land for Non-Forest Land, the Supreme Court at Paragraphs 92 and 93 held as follows:
"The question of not only about not creating pollution but is about diversion of forest land for non-forest purpose, thereby depleting forest so as to utilise land area in setting up these projects. A distinction has to be maintained between a project set up for providing public utility but which is revenue-earning, the category to which say the project of NHPC falls, and government projects of the nature like hospitals, schools, etc., that is, non-revenue-earning projects. A balance is required to be maintained in the development and protection of the environments. Development has to be based

on sustainability. If NHPC uses the Forest Land for non-forest purposes, the payment of NPC is to protect ecological and biodiversity having regard to the doctrines above-referred. Generally speaking, projects like NHPC are commercial ventures. This is also applicable to submissions made on behalf of Grid Corporation of Orissa (GRIDCO), the State of Uttaranchal and the State of Madhya Pradesh."

15. In the light of the constitutional duty enjoined on the Courts as well as Officials under the Forest Act, and taking into consideration, the contention of the respondent that the petitioner by breaking up of soil, has uprooted mangrove species, causing damage to the Mangrove eco-system and illegally drew sea water through PVC pipe line to his aqua culture farm, I am of the considered view that the petitioner is not entitled to Writ of Mandamus. However, if the petitioner wants to use the forest land in any forest area, it is open to the petitioner to make a representation to the competent authority, viz., the Central Government as per the Forest Conservation Act, 1980, for putting up of pipelines for
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his commercial activity. If the petitioner choses to make a representation to the competent authority with all necessary documents, the same shall be considered expeditiously.

16. For the reasons stated above, the Writ Petition is dismissed. No costs.

07.12.2007
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To
1. The District Forest Officer,
Nagapattinam.

2. The Forest Range Officer,
Sirkali Range.

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